Simple Website Tweaks Can Help Hotels Avoid ADA Claims

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Since 1991, Title III of the Americans with Disabilities Act has prohibited discrimination on the basis of disability in places of public accommodations. Restaurants, hotels, theaters and grocery stores all fall under the definition of public accommodation.

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Most hoteliers are familiar with the requirements of the ADA and have made accommodations in their businesses in an attempt to service all guests. Hotels now offer "accessible" or "handicap accessible" or "ADA" rooms which are specifically designed or modified to allow disabled persons to enjoy the property without discrimination. Some common accommodations include roll-in showers, wider doorways and grab bars.

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Other accommodations include accessible parking and pathways into the hotel, pool lifts, accessible facilities at check-in, and concierge and restaurants on property. Failure to make the accommodations or to provide a reasonable alternative can lead to lawsuits.

More recently, however, hotels have been caught off-guard by a new wave of litigation related to the description of accessible accommodations on hotels' online reservation systems.

The focus of these new lawsuits is the requirement to describe accessible features "in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs."[1] The description must be detailed enough to enable individuals seeking to reserve accessible rooms to do so with the same efficiency, immediacy and convenience as those seeking to reserve nonaccessible rooms.[2] It is not enough to simply have the information available should a guest call the hotel to inquire further. If a nonaccessible room can be reserved online, then the online reservation system must have sufficient information to allow a disabled individual to do the same.

Section 36.302 of the Title III regulations governs the modifications in policies, practices or procedures that a public accommodation is required to make to afford “goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.”[3]

Section 36.302(e) has five requirements specifically related to hotel reservations:

> 1. Reservations made by places of lodging. A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party –
>
> > (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;
> >
> > (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
> >
> > (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;
> >
> > (iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and
> >
> > (v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.[4]

The U.S. Department of Justice has set forth guidelines which explain and interpret the ADA.[5] In order to satisfy the guidelines promulgated by the DOJ, hotels built in compliance with the 1991 standards need only state that the hotel is accessible and describe the type of room, the size and number of beds, the type of accessible bathing facility, and the communications features available in the room.[6]

Older hotels bear a greater burden. Those built prior to 1993 were not required to meet these standards for disability access at the time of construction, and the accessibility of such hotels may be limited. Hotels built prior to 1993 are required to remove architectural barriers to accessibility if such removal is “readily achievable.” When such removal is not “readily achievable,” a hotel may use alternative methods to make its goods, services, facilities, privileges, advantages and accommodations available to disabled persons. This may mean that a hotel has taken other “readily achievable” measures to remove barriers that do not fully comply with the requirements of the ADA.

Because hotels built prior to 1993 may be accessible to varying degrees — from full compliance with the ADA to barrier removal when readily achievable to alternative measures that make a property more accessible but do not fully comply with the ADA — such hotels must offer more detail regarding accessibility in their online reservation offerings. This detail includes, but is not limited to, information about accessible entrances to the hotel, the path of travel to guest check-in and other essential services and the accessible route to the accessible room or rooms, as well as information about features that do not comply with the 1991 standards.

Therefore, if a historic hotel’s accessible rooms only have 30-inch doorways, rather than the required 32 -inch doorways, the website should say so. If a property was previously without an accessible entrance and has since installed an accessible lift to allow wheelchair-bound guests access to the property, it should be indicated on the website. If a hotel is accessible only from the rear of the property, rather than through the front door, the website should include information on how to reach the accessible entrance.

Although making modifications to bring an online reservation system into compliance may seem minor, the ramifications of failing to do so prior to suit could be costly. Under certain circumstances, an ADA claim can be mooted by the defendant’s voluntary remediation of an access barrier during the pendency of litigation.[7] It would seem to follow that a website which does not provide the required information could easily be brought into compliance

and therefore moot any pending lawsuit by depriving the courts of subject matter jurisdiction.

However, in one of the few cases of this genre to make it to a written decision, the U.S. District Court for the District of Arizona found that "[a] change to a website is akin to a change in policy, which courts have found is not sufficient to meet the stringent standard for proving a case has been mooted by the defendant's voluntary conduct if the policy could be easily abandoned or altered in the future."[8]

The initiation of these lawsuits is made easier by the remote nature of the alleged discrimination. These lawsuits are similar to physical barrier ADA cases, in that a plaintiff must establish that he is a disabled individual and that he has suffered an injury in the past and without court-ordered relief will again be harmed in the future.[9] The difference is that the plaintiff is complaining about discrimination he faces on his computer screen. The plaintiff need not visit the physical property; the plaintiff does not even have to allege that he possesses or possessed an intent to visit the property.[10] The injury is relative to the hotel's website and reservation system, not the hotel's physical property.[11]

A hotel would be well-advised to review its online reservations systems, compare the information that is published online to the conditions present at the hotel, and ensure that the required information is readily available to potential guests. The costs of making these modifications now is far less than the cost of defending a lawsuit later.

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[1] 26 C.F.R. §36.302(e)(1)(ii).

[2] Poschmann v. Coral Reef of Key Biscayne Developers Inc., 2018 WL 3387679, *4 (S.D. Fla. 2018, May 23, 2018).

[3] 26 C.F.R. §36.302.

[4] 26 C.F.R. §36.302(e).

[5] 28.C.F.R. Pt. 36, App. A, Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities (March 15, 2011) (hereinafter "DOJ Guidance").

[6] DOJ Guidance.

[7] Bacon v. Walgreen Co., 91 F. Supp. 3d 446, 451 (E.D.N.Y. 2015). See also, Thomas v. Branch Banking and Trust Co., 32 F. Supp. 3d 1266, 1273 (N.D. Ga. 2014).

[8] Brooke v. A-Ventures, 2017 WL 5624941, *3 (D. Ariz. Nov. 22, 2017). See also, Sheely v. MRI Radiology Network, P.A., 505 F. 3d 1173, 1184 (11th Cir. 2007) (finding plaintiff's claims were not moot despite defendant's purported voluntary cessation and implementation of new policy).

[9] Honeywell v. Harihar Inc., 2018 WL 6304839, *2 (M.D. Fla. Dec. 3, 2018).

[10] See id. at *3

[11] See id.